A

LEE KEAN CHOON v. KHOO SAN & ORS

FEDERAL COURT, PUTRAJAYA
WAN AHMAD FARID SALLEH CJ
VAZEER ALAM MYDIN MEERA FCJ
LEE SWEE SENG FCJ
B [CIVIL APPEAL NO: 01(f)-11-04-2025(B)]
9 DECEMBER 2025

Abstract – *Section 143(4) of the National Land Code ('NLC') provides that the decision of the State Director or the Land Administrator, as the case may be, shall be notified by the Land Administrator to each of the co-proprietors. The notification shall be served on the co-proprietors in accordance with s. 431 of the NLC, which necessarily means that it must be in writing and it must be an official documentary communication under the hand of the authority such that it conforms with the requirements of the NLC. Hence, the phrase 'communicated to him', in s. 418 of the NLC must be via official correspondence from the Land Administrator.*

C

D

E ***LAND LAW:*** *Ownership – Partition – Notification – Co-ownership of land – Co-proprietors entered into private agreement on land division and use – One proprietor applied to Land Office to partition land into separate titles without telling other proprietor and without disclosing private agreement – Land Office approved partition application – Failure to notify co-proprietor of approval – Whether notification made and served in accordance with statutory requirements – National Land Code, ss. 141A, 143(4) & 431*

F

LAND LAW: *Ownership – Partition – Appeal – Appeal against decision of Land Office – Co-ownership of land – Co-proprietors entered into private agreement on land division and use – One proprietor applied to Land Office to partition land into separate titles without telling other proprietor and without disclosing private agreement – Aggrieved proprietor appealed against decision of Land Office in allowing application for partition – Computation of time – Whether three-month period under s. 418 of National Land Code ran from date of actual knowledge or date of official communication – Whether appeal filed within time – Whether appeal competent*

G

H

The appellant's father and the first respondent, who were co-proprietors of a piece of land, had, by an agreement executed in 1971 ('1971 agreement'), divided the land into two portions, with each taking exclusive use of their own portion. In 2008, the appellant's father transferred his half undivided share in the land to the appellant. From the beginning, the appellant's father,

I

and subsequently the appellant, and the first respondent used a single main access road located behind the first respondent's part of the land. In 2015, a part of the land was acquired by the Government, resulting in the land being severed into two plots of land, with the appellant and the first respondent remaining as co-proprietors. In 2019, the first respondent alleged that he had lost access to his part of the land as the main access road was completely blocked by the construction of an expressway. The first respondent sought to gain alternative access through the appellant's part of the land, but the appellant refused. In 2020, unbeknownst to the appellant, the first respondent applied for the partition of the two plots of land. The second respondent approved the said applications. The appellant only had an inkling of the first respondent's partition application in March 2021 when a surveyor carried out land title survey work on his part of the land. The appellant immediately sent a letter to the third respondent, objecting to the partition but received no response. The appellant resent the letter, together with a letter dated 13 August 2021, to obtain documents relating to the application for the partition. The third respondent subsequently served copies of the relevant documents and the decision of the second respondent on the appellant on 18 August 2021. This prompted the appellant to file an originating summons, at the High Court, against the decision of the second respondent to partition the two plots of land. The High Court dismissed the appellant's claim and the appellant's appeal to the Court of Appeal was unsuccessful. The High Court and the Court of Appeal both opined that the three months' timeline to file the appeal, under s. 418 of the National Land Code ('NLC'), was calculated from the date the appellant was informed about the second respondent's decision by the surveyor in March 2021. Hence, the present appeal. The primary issue that arose for adjudication was whether the appellant's appeal, pursuant to s. 418 of the NLC, was filed within the statutory time period of three months from the date the decision was communicated to him.

Held (allowing appeal)

Per Vazeer Alam Mydin Meera FCJ delivering the judgment of the court:

(1a) The second and third respondents had proceeded with the first respondent's application in the absence of any participation by the appellant and approved the application for partition based on the plan submitted by the first respondent. The plan submitted by the first respondent was not in accordance with the terms of the 1971 agreement. Once the second respondent had approved the first respondent's partition for the two plots of land, there was further statutory requirement for the third respondent to notify all co-proprietors of that approval. The third respondent must also

require the co-proprietors, *ie*, the appellant and the first respondent, to pay survey fees for their respective portions and the fees chargeable in connection with the preparation and registration of final documents of title to each portion. Such notice would have to be served on the appellant in accordance with the provisions in s. 431 of the NLC. (paras 36 & 37)

(1b) In order for the notice to be served in the manner prescribed in s. 431 of the NLC, it must be in writing, for the act of serving the notice by delivering, leaving, posting or substituted service in the mode envisaged in s. 432 of the NLC could only be done through a document. An administrative decision is not operative until proper notice is given to the person affected. Where the statute required notice to be served, failure to communicate, in accordance with the statutory procedure, rendered the decision ineffective and unenforceable. For time to run for an appeal to be lodged under s. 418 of the NLC, the appellant would need to be properly served with the decision, from which the appellant would have actual knowledge of the decision. (paras 38-40)

(2a) The appellant's encounter with the surveyor was the first time that he had any inkling of the first respondent's application for partition and that there was an approval by the second respondent. However, the information given by the surveyor was incomplete. In any event, there was no service of the notice of decision of the second respondent as the surveyor was not on the land to serve the said notice. Therefore, it could not be said that the appellant had actual knowledge in March 2021, of the second respondent's decision of approving the partition of the two plots of land. (paras 43 & 44)

(2b) The second and third respondents, in their letter dated 18 August 2021, enclosed the first respondent's application for the partition of the two plots of land, together with documents evidencing the decision of the second respondent approving the application for partition. This was the first time that the appellant was served with notice of the first respondent's application as well as notice of the second respondent's decision approving the partition in respect of both plots of land. Therefore, for the computation of time provided in s. 418 of the NLC, the date on which the decision was communicated to the appellant was 18 August 2021 and not March 2021. (para 46)

(2c) The High Court and the Court of Appeal erred in holding that the three months' timeline to file the appeal under s. 418 of the NLC be calculated from the date the appellant was informed about the second respondent's decision by the surveyor in March 2021 and not from the

date the appellant received actual notice of the decision in full and the related documents. Taking 18 August 2021 as the date on which the decision was communicated, the appellant had until 18 November 2021 to file his appeal under s. 418 of the NLC. The originating summons in this case was filed on 3 November 2021, which was well within time. Hence, the appeal was competent. (paras 47 & 49)

(3) The first respondent, in making the application for partition, under s. 141A of the NLC, had a duty to make full and frank disclosure of all relevant matters for the consideration of the second respondent. The 1971 agreement was a crucial agreement that must be disclosed in the application for partition, which the first respondent failed to do. The suppression of this crucial piece of evidence meant that the second respondent, in arriving at the decision to partition the two plots in the manner sought by the first respondent, did not have all the relevant information before him. This caused injustice and harm to the appellant. The decision of the second respondent, in approving the first respondent's application for the partition of the land, was cancelled. (paras 51 & 54)

Bahasa Melayu *Headnotes*

Bapa perayu dan responden pertama, selaku pemilik bersama sebidang tanah, telah membahagikan tanah tersebut menjadi dua bahagian melalui satu perjanjian pada 1971 ('perjanjian 1971') iaitu kedua-duanya menikmati penggunaan eksklusif bahagian masing-masing. Pada 2008, bapa perayu telah memindah milik separuh bahagian tanah yang tidak dipecahkan pada perayu. Sejak awal lagi, bapa perayu, dan seterusnya perayu, serta responden pertama menggunakan satu jalan akses utama yang terletak di belakang bahagian tanah responden pertama. Pada 2015, sebahagian tanah tersebut diambil alih oleh Kerajaan, menyebabkan tanah tersebut terpecah menjadi dua petak tanah, dengan perayu dan responden pertama kekal sebagai pemilik bersama. Pada 2019, responden pertama menyatakan dia kehilangan akses terhadap bahagian tanahnya kerana jalan akses utama telah terhalang sepenuhnya akibat pembinaan lebuh raya. Responden pertama cuba mendapatkan akses alternatif melalui bahagian tanah perayu tetapi perayu enggan. Pada 2020, tanpa pengetahuan perayu, responden pertama memohon untuk memecah sempadan kedua-dua petak tanah tersebut. Responden kedua meluluskan permohonan ini. Perayu hanya tahu tentang permohonan pecah sempadan oleh responden pertama pada Mac 2021 apabila seorang juruukur menjalankan kerja-kerja ukur tanah di bahagian tanahnya. Perayu terus menulis pada responden ketiga untuk membantah pecah sempadan tersebut tetapi tidak menerima apa-apa jawapan. Perayu mengirim semula surat, bersama-sama sepucuk surat bertarikh 13 Ogos 2021, untuk mendapatkan

A dokumen berkaitan permohonan pecah sempadan tersebut. Responden ketiga kemudian menyerahkan salinan dokumen berkaitan dan keputusan responden kedua pada perayu pada 18 Ogos 2021. Ini mendorong perayu memfailkan saman pemula di Mahkamah Tinggi terhadap keputusan responden kedua yang memecah sempadan kedua-dua petak tanah tersebut. B Mahkamah Tinggi menolak tuntutan perayu dan perayu gagal dalam rayuannya di Mahkamah Rayuan. Mahkamah Tinggi dan Mahkamah Rayuan kedua-duanya berpendapat bahawa tempoh masa tiga bulan untuk memfailkan rayuan, bawah s. 418 Kanun Tanah Negara ('KTN'), dikira dari tarikh perayu dimaklumkan tentang keputusan responden kedua oleh C juruukur pada Mac 2021. Maka timbul rayuan ini. Isu utama yang timbul untuk diputuskan adalah sama ada rayuan perayu, bawah s. 418 KTN, telah difailkan dalam tempoh masa statutori tiga bulan dari tarikh keputusan itu disampaikan padanya.

Diputuskan (membenarkan rayuan)

D **Oleh Vazeer Alam Mydin Meera HMP menyampaikan penghakiman mahkamah:**

(1a) Responden kedua dan ketiga telah meneruskan dengan permohonan responden pertama tanpa apa-apa penyertaan oleh perayu dan meluluskan permohonan pecah sempadan berdasarkan pelan yang E dikemukakan oleh responden pertama. Pelan yang dikemukakan oleh responden pertama tidak selaras dengan syarat-syarat perjanjian 1971. Sebaik sahaja responden kedua meluluskan pecah sempadan responden pertama bagi kedua-dua petak tanah tersebut, terdapat keperluan statutori lanjut untuk responden ketiga memaklumkan kesemua F pemilik bersama tentang kelulusan tersebut. Responden ketiga juga perlu menghendaki agar pemilik bersama, iaitu perayu dan responden pertama, membayar yuran ukur untuk bahagian masing-masing dan yuran yang dikenakan berkaitan penyediaan dan pendaftaran dokumen hak milik muktamad bagi setiap bahagian. Notis sedemikian perlu disampaikan pada perayu selaras dengan peruntukan s. 431 KTN. G

(1b) Demi membolehkan notis disampaikan menurut cara yang digariskan bawah s. 431 KTN, ini mestilah secara bertulis, kerana tindakan menyampaikan notis melalui serahan, meninggalkan, mengirim atau penyampaian ganti dalam cara yang dibayangkan dalam s. 432 KTN H hanya boleh dilakukan melalui satu dokumen. Satu-satu keputusan pentadbiran tidak beroperasi hingga notis yang sewajarnya diberikan pada orang yang terjejas. Apabila statut menghendaki agar notis disampaikan, kegagalan berkomunikasi menurut tatacara statutori menyebabkan keputusan itu tidak berkesan dan tidak boleh I dikuatkuasakan. Demi membolehkan masa berjalan untuk rayuan

difailkan bawah s. 418 KTN, perayu perlu disampaikan dengan keputusan tersebut secara sewajarnya, yang mana perayu akan mempunyai pengetahuan sebenar tentang keputusan itu.

(2a) Pertemuan perayu dengan juruukur adalah kali pertama dia mendapat tahu tentang permohonan responden pertama untuk pecah sempadan dan bahawa terdapat kelulusan oleh responden kedua. Walau bagaimanapun, maklumat yang diberikan oleh juruukur tersebut tidak lengkap. Walau apa pun, tiada penyampaian notis keputusan responden kedua kerana juruukur tersebut bukan berada di tanah itu untuk menyampaikan notis berkenaan. Oleh itu, tidak boleh dikatakan bahawa perayu mempunyai pengetahuan sebenar pada Mac 2021, tentang keputusan responden kedua meluluskan pecah sempadan kedua-dua petak tanah tersebut.

(2b) Responden kedua dan ketiga, dalam surat mereka bertarikh 18 Ogos 2021, melampirkan permohonan responden pertama untuk pecah sempadan kedua-dua petak tanah tersebut, bersama-sama dokumen yang menunjukkan keputusan responden kedua meluluskan permohonan pecah sempadan. Ini adalah kali pertama perayu disampaikan dengan notis permohonan responden pertama serta notis keputusan responden kedua meluluskan pecah sempadan berkenaan kedua-dua petak tanah tersebut. Oleh itu, bagi pengiraan masa yang diperuntukkan dalam s. 418 KTN, tarikh keputusan itu disampaikan kepada perayu adalah 18 Ogos 2021 dan bukan Mac 2021.

(2c) Mahkamah Tinggi dan Mahkamah Rayuan terkhilaf dalam memutuskan bahawa tempoh masa tiga bulan untuk memfailkan rayuan, bawah s. 418 KTN, dikira dari tarikh perayu dimaklumkan tentang keputusan responden kedua oleh juruukur pada Mac 2021 dan bukan dari tarikh perayu menerima notis sebenar keputusan itu secara lengkap dan dokumen-dokumen berkaitan. Mengambil 18 Ogos 2021 sebagai tarikh keputusan itu disampaikan, perayu mempunyai masa sehingga 18 November 2021 untuk memfailkan rayuannya bawah s. 418 KTN. Saman pemula dalam kes ini telah difailkan pada 3 November 2021, iaitu dalam tempoh masa yang ditetapkan. Oleh itu, rayuan ini adalah kompeten.

(3) Responden pertama, dalam membuat permohonan pecah sempadan, bawah s. 141A KTN, berkewajipan membuat pendedahan penuh dan berterus terang tentang semua perkara relevan untuk pertimbangan responden kedua. Perjanjian 1971 adalah perjanjian penting yang mesti didedahkan dalam permohonan pecah sempadan, namun ini gagal didedahkan oleh responden pertama. Penyembunyian bukti penting

A ini bermakna responden kedua, dalam mencapai keputusan untuk memecah sempadan kedua-dua petak berdasarkan permohonan responden pertama, tidak memperoleh semua maklumat relevan. Ini menyebabkan ketidakadilan dan kemudaratan pada perayu. Keputusan responden kedua, dalam meluluskan permohonan responden pertama
B untuk pecah sempadan tanah tersebut, dibatalkan.

Case(s) referred to:
Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor [2015] 3 CLJ 861 FC ***(refd)***
Margaret Chua v. Ho Swee Kiew & Ors [1961] CLJU 61; [1961] 1 LNS 61 HC ***(refd)***

C **Legislation referred to:**
National Land Code, ss. 140, 141, 141A, 142(1)(b), (3), (4)(a), 143(4)(a), (b), 144, 418(1), (2), 430, 431

For the appellant - M Rajenthirakumar R Malaiapan, Tee Tai Tzian, Lee Lin Jun & Hiu Yeat Fong; M/s Tee Tai Tzian & Sim
For the 1st respondent - Terence Chan Kah Meng, Chai Bitt Yen & Yeap Xi Jin; M/s Ting
D *& Ting*
For the 2nd & 3rd respondents - Hani Aziza Ismail, Namirah Hanum Mohamed Albaki & Nur Syafinaz Hayati Kamarrudin; SLAs, Selangor

[Editor's note: For the Court of Appeal judgment, please see Lee Kean Choon v. Khoo San & Ors And Another Appeal [2025] 8 CLJ 757 (overruled); For the High Court judgment,
E *please see [2024] CLJU 2311 (overruled).]*

Reported by Najib Tamby

JUDGMENT

F **Vazeer Alam Mydin Meera FCJ:**

Introduction

[1] The appellant (plaintiff in the High Court) filed an action primarily to nullify the partition of two plots of land in which the appellant and the first
G respondent (first defendant in the High Court) were co-proprietors with equal undivided shares. The partition was done by the second respondent (second defendant in the High Court) as the Selangor State Director of Lands and Mines, and the fresh titles were registered and issued by the third respondent (third defendant in the High Court) as the Klang District Land Administrator.

H **[2]** The plaintiff contended that the partition was not done in accordance with the provisions of the law and additionally was in breach of an agreement dated 4 November 1971 between the first respondent and the plaintiff's father who was the original co-proprietor of the two plots of land with the first respondent. The plaintiff's application in the originating summons was
I in effect an appeal under s. 418 of the National Land Code (Revised 2020)

("NLC") against the decision of the second and third respondents to partition the two plots of land into four separate plots bearing fresh issue documents of title. The plaintiff had, among others, prayed for the following reliefs:

(i) leave of court to file the appeal in the High Court against the second respondent's decision on 7 August 2020 approving the first respondent's applications dated 11 February 2020 partitioning the two plots of land held under Geran 326882, Lot 15951, Mukim Kapar, Daerah Klang, Selangor ("Geran 326882") dan Geran 326883, Lot 15952, Mukim Kapar, Daerah Klang, Selangor ("Geran 326883") into four separate titles ("second respondent's approvals").

(ii) declaration to the effect that the second respondent's approvals to partition the two plots of land are *ultra vires* and invalid, hence to set aside the said approvals;

(iii) a declaration to revoke the four titles which were issued as a result of the second respondent's approvals to partition the two plots of land and that Geran 326882 and Geran 326883 be restored and remain in force; and

(iv) extension of time to file the originating summons in the High Court to appeal against the second respondent's approvals.

[3] The first respondent, apart from opposing the originating summons, counterclaimed for a declaration that the agreement dated 4 November 1971 was void due to frustration arising from the changes to the two plots of land that had occurred over the years, and also prayed for an order for the removal of private caveats on the land lodged by the appellant.

[4] High Court dismissed the plaintiff's claim with costs. The first respondent's counterclaim to declare the agreement dated 4 November 1971 void was also dismissed, however, the application for removal of the caveats was allowed. The appellant's appeal to the Court of Appeal against the High Court's decision was dismissed and the order of the High Court was affirmed.

[5] The main issue before the High Court and Court of Appeal was whether this appeal filed by the appellant pursuant to s. 418 of the NLC was filed with the statutory time period of three-month from the date the decision was communicated to him. If it was filed beyond the three months period from the date when the second respondent's approvals were communicated to the appellant, the appeal would be rendered incompetent thus affecting the jurisdiction of the High Court to hear the matter. Hence, the court was called upon to construe the meaning of "communicated" in s. 418 of the NLC and ascertain whether the manner in which the decision of the second respondent

to partition the two plots of land was conveyed to the appellant was sufficient to constitute "communication", and if so, when was it done. The determination of these matters is crucial for the computation of time stipulated in s. 418 of the NLC.

The Motion Of Leave

[6] On 23 April 2025, the appellant's notice of motion for leave of court to appeal to the Federal Court was allowed by this court on the following question of law:

> Section 418 NLC 1980 provides "... within the period of three months beginning with the date on which it was communicated to him ...". Whether the phrase "communicated to him" here requires official letter officially from the Land Office?

Background Facts

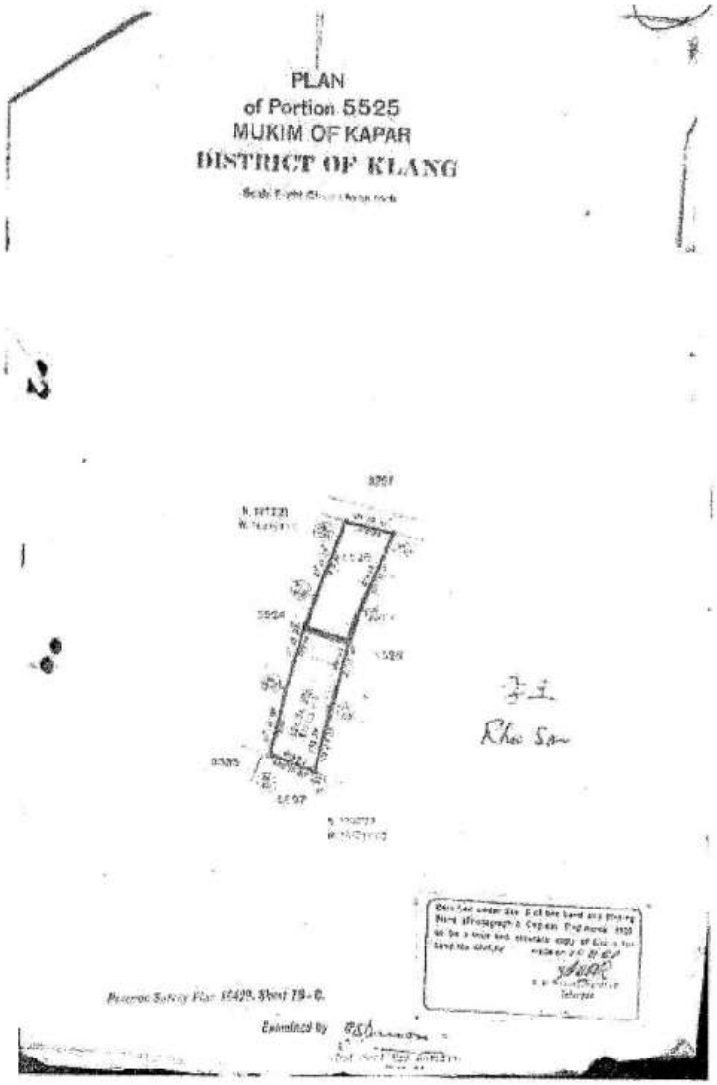
[7] The appellant's father, Lee Booh @ Lee Ong, and the first respondent, Khoo San, who were co-proprietors of a piece of land known as Lot 5525, Mukim Kapar, Daerah Klang, Selangor ("the said land") held under Hakmilik 39612 ("the old title") had by an agreement dated 4 November 1971 ("the agreement") divided the said land into two distinct portions, one delineated in red for the exclusive use and benefit of the first respondent and the other in blue for the exclusive use and benefit of appellant's father. This is provided for in cl. 3 of the agreement, where it is stated:

> 3. The said Khoo San shall have the use and benefit of that part of the land delineated in red while the said Lee Booh alias Lee Ong shall have the use and benefit of the part delineated in blue as more particularly set out in the sketch plan attached hereto.

The other relevant clauses of the agreement are:

> 2. The parties hereto shall be entitled to be registered as co-proprietors of a half undivided share each in the said land.
>
> ...
>
> 4. In the event that the parties hereto are desirous of apportioning the said land, the parties each for their own part hereby covenants with the other to sign all necessary documents to facilitate the same. It is mutually agreed between the parties hereto that the document of title shall be kept by the said Khoo San for safe custody.
>
> ...
>
> 6. This agreement shall be binding upon the Personal Representatives, assigns and successors in title of the parties hereto.

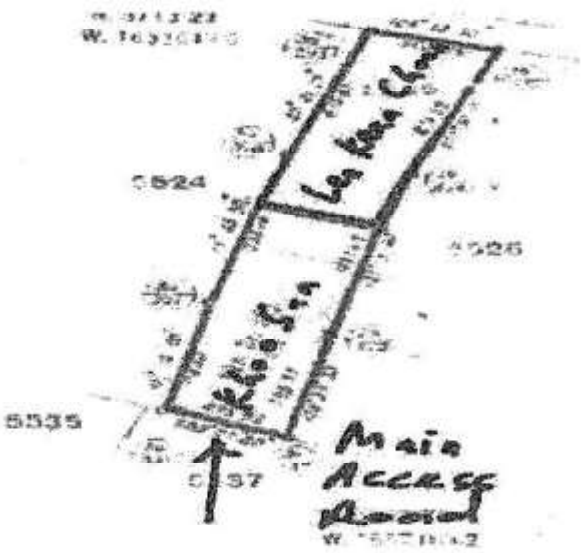
[8] The sketch plan referred to in cl. 3 to the agreement is as below:



[9] Further, it was agreed between the appellant's father and the first respondent, that the appellant's father would plant durian trees on his part of the land while the first respondent would plant oil palm trees on the first respondent's part of the land. And so it was done.

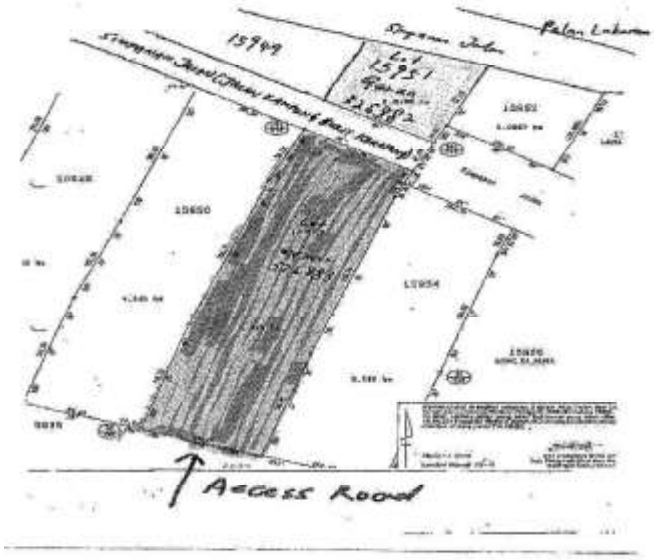
[10] On 16 June 2008, the appellant's father transferred his half undivided share in the said land to the appellant, who then became the registered owner of that half undivided share, while the first respondent remained as the registered owner of the other half undivided share. In accordance to cl. 6 of the agreement, the agreement was binding on both the appellant and the first respondent.

[11] From the beginning, the appellant's father (and subsequently the appellant) and the first respondent used a single main access road located behind the first respondent's part of the land ("the main access road") as ingress and egress to their respective parts of the land, whereby the first respondent would have direct access to his part, while the appellant and his father would have to pass through the first respondent's part of the land in order to access to their part of the land. This can be seen in the sketch plan below:



[12] On 13 October 2015, a part of the said land was acquired by the Government to build Jalan Kampung Bukit Kerayong ("the land acquisition"). As a result of the land acquisition, the said land was severed into two parts, and the old title became two separate titles known as Geran

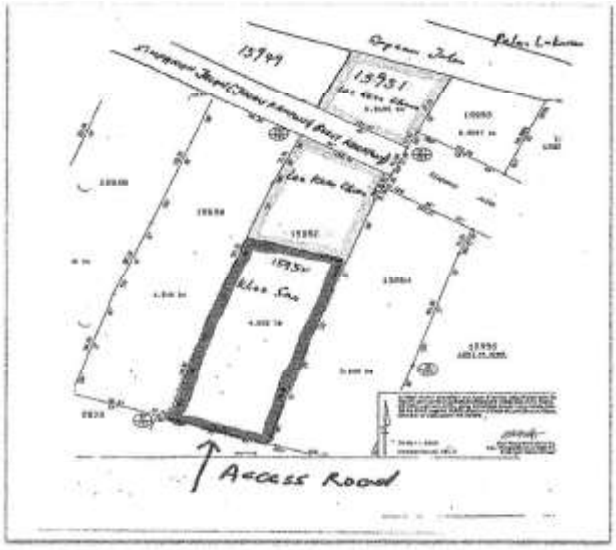
326882 and Geran 326883, with the appellant and the first respondent remaining as co-proprietors on both titles. This can be seen in the sketch plan below where Geran 326882 is marked yellow and Geran 326883 is marked green, with Jalan Kampung Bukit Kerayong running between the two:



[13] As the land acquisition affected only the appellant's part of the land, the first respondent, based on the terms of agreement, allowed the appellant to take all the compensation paid by the Government for the land acquisition.

[14] After the construction of Jalan Kampung Bukit Kerayong, the appellant's father stopped using the original main access road to enter the appellant's part of the land and instead used Jalan Kampung Bukit Kerayong as access. On the other hand, the first respondent continued to use the main access road as access to his part of the land.

[15] Despite the changes brought about by the land acquisition, both the appellant's father and the first respondent continued to use and enjoy their respective parts of the land in accordance with the terms of the agreement as shown in the sketch below. The appellant had durian trees on his portion and the first respondent had oil palm trees on his.



[16] In 2019, the first respondent alleged that he had lost access to his part of the land as the main access road was completely blocked by the construction of the West Coast Expressway ("WCE"). The first respondent then spoke to the appellant a few times in order to gain alternative access through the appellant's part of the land from Jalan Kampung Bukit Kerayong as the appellant's part of the land was gated at all times. However, the appellant refused.

[17] On 4 February 2020, the first respondent, without the knowledge or consent of the appellant, applied under ss. 140 to 144 of the NLC for the partition of Geran 326882 and Geran 326883 ("the applications for partition"). On 7 August 2020, the second respondent approved the said applications for partition, and upon which:

(i) Geran 326882 was partitioned into:

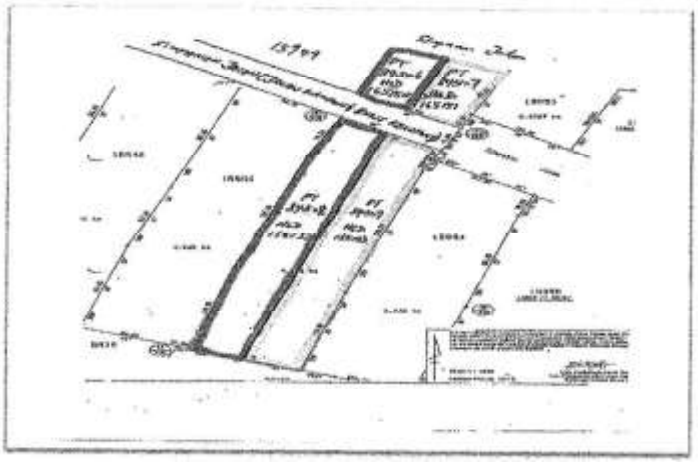
(a) HSD 165150 PT 84526, Mukim Kapar, Daerah Klang, Selangor where the first respondent is the registered owner (the red portion in the sketch below) ("HSD 165150"); and

(b) HSD 165151 PT 84527, Mukim Kapar, Daerah Klang, Selangor where the appellant is the registered owner (the blue portion in the sketch below ("HSD 165151");

(ii) Geran 326883 was partitioned into:

(a) HSD 165152 PT 84528, Mukim Kapar, Daerah Klang, Selangor where the first respondent is the registered owner (the red portion in the sketch below ("HSD 165152"); and

(b) HSD 165153 PT 84529, Mukim Kapar, Daerah Klang, Selangor where the appellant is the registered owner (the blue portion in the sketch plan below ("HSD 165153").



[18] The appellant did not have any knowledge of the applications for partition. In early March 2021, a surveyor from the Klang Land Office was on the appellant's part of the land to carry out land title survey work on Geran 326882. It was then that the appellant was shown by the surveyor a letter of approval of the application for partition of the land contained in Geran 326882 dated 3 September 2020. This is the first time that the appellant had any information as to the partition of Geran 326882.

[19] The appellant was surprised because he had never made any application for the partition of Geran 326882 and was also never informed by the first respondent regarding any application for its partition, nor was the appellant ever asked by the first respondent to sign any application for partition of the lands. Further, the appellant was never shown any proposed partition plan even though the appellant was always on his part of the land in both Geran 326882 and Geran 326883.

[20] The appellant subsequently, through his previous solicitors, Messrs Rafik Rahem & Associates, sent a letter dated 26 March 2021 to the third respondent objecting to the partition of Geran 326882 and further enquired whether the application for partition also included Geran 326883.

[21] However, the letter dated 26 March 2021 was not responded to by the third respondent. The appellant was then informed by an officer at the third respondent's office that the letter dated 26 March 2021 was never received by the third respondent.

[22] The appellant's previous solicitor resent the letter dated 26 March 2021 together with a letter dated 13 August 2021 to obtain documents relating to the application for the partition of both Geran 326882 and Geran 326883. Subsequently, the third respondent's office served copies of the relevant documents and the decision of the second respondent on the appellant's previous solicitor on 18 August 2021.

[23] Upon receiving the said documents, the appellant found that:

(i) the application form for partition did not carry the appellant's signature;

(ii) that the first respondent did not disclose the existence of the agreement to the second respondent; and

(iii) that the partition was in breach of the terms of the agreement.

[24] The appellant then filed the originating summons in the High Court appealing against the decision of the second respondent to partition both Geran 326882 and Geran 326883. The respondents argued that the appeal was filed beyond the three months stipulated in s. 418 of the NLC and thus the court lacked jurisdiction. The respondents contended that the time ran from March 2021 when the third respondent's surveyor informed the appellant of the second respondent's decision to partition Geran 326882. However, in contrast, the appellant argued that, the time started to run from 18 August 2021 when the third respondent served all copies of documents relating to the partition application and the letter of the second respondent's decision.

The High Court's Decision

[25] The findings and decision of the High Court are well summarised by the Court of Appeal in paras. 16 and 17 of its grounds of judgment:

> [16] The learned HCJ's decision can be summarised as follows:
>
> (i) under s. 418 of the National Land Code (Revised - 2020) ('NLC'), the plaintiff was required to file appeal against the second defendant's decision to partition the land under s. 418 of the National Land Code (Revised - 2020) ('NLC') at least three months from the date the plaintiff was notified and came to know of the second defendant's decision in approving the first defendant's application for partition of the land held under Geran 326882;
>
> (ii) based on the evidence before the court, the three months should be calculated from the date the plaintiff was informed about the decision of partitioning *ie*, in March 2021, *ie*, at most before 1 July 2021 and not from the date they received the documents about the partition from the second or third defendants;

(iii) *Ipso facto*, the High Court therefore had no jurisdiction to allow plaintiff's appeal under s. 418 of the NLC;

(iv) with reference to the plaintiff's application to extend the time to file his appeal against the second defendant's decision, the High Court has no powers to extend the period stipulated under s. 418 of the NLC (see the case of *Mohd Nadir A Syed Ahamed & Ors v. Zubaidi Abdul Hamid & Ors* [1994] CLJU 187; [1994] 1 LNS 187; [1994] 2 MLJ 159.

(v) The specific provision under s. 418 of the NLC cannot be circumvented by an application for a declaratory relief as decided by the Federal Court in *Land Executive Committee Of The Federal Territory v, Syarikat Harper Gilfillan Berhad* [1980] CLJU 150; [1980] 1 LNS 150; [1981] 1 MLJ 234. The plaintiff's failure to adhere the requisite timeline provided was therefore fatal.

The First Defendant's Counterclaim

(i) with reference to the first defendant's counterclaim, the evidence adduced was insufficient to support his claim that the 1971 agreement was frustrated;

(ii) there was no credible evidence adduced to prove that as a result of the land acquisition which caused the land held under Geran 39612 to be separated into Geran 326882 and 326883, the first defendant no longer had access to his portion under the 1971 agreement;

(iii) the evidence adduced shows that despite the 2015 acquisition, the first defendant still had access to his land. Furthermore, the first defendant had not raised any issue on the fact that he could not gain access to his land to carry out plantation activities;

(iv) the 2015 land acquisition could not be said to cause a change of circumstances that resulted in a fundamental and radical change to rights and obligations of the first defendant and the plaintiff which rendered the 1971 agreement impossible of being performed;

(v) the rights of both the plaintiff and the first defendant as the registered co-proprietors on Geran 326882 based on the law and their physical possession was not adversely affected despite the land acquisition exercise and the issuance of the two separate titles under Geran 326882 and 326883.

(vi) even if the changes can be said to have the effect of frustrating the 1971 agreement, that change was caused by the first defendant's own act in applying for the partition of both Geran 326882 and 326883. This was not a change that was beyond the control of the first defendant but a self-induced frustration; and

(vii) in light of the aforesaid, both the plaintiff's claim and the defendant's counterclaim were dismissed with no order as to cost.

A

The Court Of Appeal's Decision

[26] The Court of Appeal was of the view that there were two main issues for determination and decided as follows in the grounds of judgment:

Decision

B

[45] For purposes of the present appeal, we are of the view that there are two main issues that has to be dealt with:

(i) firstly, whether the service of the notice by way of substituted service by the third defendant was valid?

C

(ii) secondly, whether the time for the plaintiff to lodge the appeal commences from early March 2021 or from 18 August 2021?

Court's Analysis On The First Issue

[46] It is an undisputed fact that the notice of the first defendant's application to the second defendant was served to the plaintiff by the third defendant by way of substituted service. This was done by affixing a copy of the said notice on a court-house around 14 February 2020 (p. 291 RR, Bahagian C, Jilid 2A (end. 5) and by publishing a copy of the said notice in the *Gazette* on 12 March 2020 (p. 294 RR, Bahagian C, Jilid 2A (encl. 5) as required under s. 432(1)(a)(ii) &(b) of the NLC.

D

E

[47] The attempt to serve the said notice by way of personal service was however done on 19 February 2020 which was well after the notice by way of substituted service was deemed served on the plaintiff. This was confirmed by the third defendant's AIR at p, 81 RR, Bahagian B, Jilid 2 (encl. 4), where the notice server, one Hafizul Alias affirmed that he could not locate the plaintiff at his address based on the official land search, on 19 February 2020.

F

[48] As the substituted service was effected earlier than the attempt to serve by way of personal service, we therefore are of the considered view that substituted service which was effected on 14 February 2020 was irregular and premature as submitted by learned counsel for the plaintiffs.

G

Court's Analysis On The Second Issue

[49] Under s. 418 of the NLC:

> Any person or body aggrieved by any decision under this Act of the State Director, the Registrar or any Land Administrator may, **at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court**.

H

I

[50] The issue of when the period of three months is to be calculated was dealt extensively by the Federal Court in *Mohd Nadir A Syed Ahamed & Lain-Lain lwn. Zubaidi Abdul Hamid & Lain-Lain* (*supra*), where the applicant's appeal pursuant to the provisions of s. 418 NLC therein, was filed out of time by one day.

[51] Whilst we do not condone the manner in which the second and third defendants effected substituted service of the notice of the first defendant's application for partition to the second defendant, we are constrained to state that based on the principle of *stare decisis* as explained by the Federal Court in the case of *Dalip Bhagwan Singh v. PP* [1997] 4 CLJ 645, we are obliged to follow the decision of the Federal Court in *Mohd Nadir A Syed Ahamed & Lain-Lain lwn. Zubaidi Abdul Hamid & Lain-Lain* (*supra*).

[52] Based on the aforesaid decision, it is axiomatic that the three month timeline to file the appeal under s. 418 of the NLC, must for all intent and purposes be calculated from the date the plaintiff was informed about the decision of partitioning in early March 2021 and not from the date the plaintiff received the documents about the partition from the second or third defendants in August 2021.

Conclusion

[53] In the upshot, notwithstanding our finding that the substituted service was irregular and premature, the plaintiff's appeal to the High Court was out of time.

[54] Accordingly, we agree with the decision of the High Court Judge not to allow the first defendant's counterclaim for a declaration that the 1971 agreement is frustrated for circumstances beyond the control of both parties and no to award any form of compensation sought.

(emphasis added)

Decision Of This Court

[27] The appellant's appeal to the High Court was pursuant to s. 418 of the NLC that reads:

418 Appeals to the court

(1) Any person or body aggrieved by any decision under this Act of the (State Director), the Registrar or any (Land Administrator) may, **at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court**.

(2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make such order thereof as it consider just.

(3) In this section "decision" includes any act, omission, refusal, direction or order.

(emphasis added)

[28] If the appellant intends to appeal the decision of the second respondent, he would, pursuant to s. 418(1) of the NLC, have to do so within a period of three months from the date of communication of the decision to him. Hence, the crucial issue before us is: was the second respondent's decision to approve the partition of both the plots of land contained in Geran 326882 and Geran 326883 communicated to the appellant, and if so, when did the second or third respondent communicate this decision?

[29] Uncontroverted evidence shows that the first respondent as co-proprietor unilaterally applied for partition of both the plots of land contained in Geran 326882 and Geran 326883 pursuant to s. 141A of the NLC, and it reads:

> 141A Application for partition by any co-proprietor
>
> Notwithstanding sections 140 and 141, any co-proprietor where other co-proprietors neither join in nor consent to the making of the application may apply for approval to partition the land.

[30] The procedure for application of partition of land is contained in s. 142 of the NLC and it provides:

> 142 Applications for approval
>
> (1) Any application for approval of the partition of any land shall be made in writing to the Land Administrator in Form 9B, and shall be accompanied by:
>
> (a) such fee as may be prescribed;
>
> (b) *a plan of the land on a scale sufficient to satisfy the Land Administrator of all the details of the partition*, together with such number of copies thereof as may be prescribed or, in the absence of any such prescription, as the Land Administrator may require;
>
> (c) if it is so prescribed or, in the absence of any such prescription, if the Land Administrator so requires, a copy of any approval or consent required under paragraph 136(1)(c) (as applied by section 141);
>
> (d) all such written consents to the making of the application as are required under paragraph (e) of the said subsection as so applied; and
>
> (e) the written consent to the making of the application of any co-proprietor who has not joined therein, provided that in the case of an application made under section 141A, such consents shall be dispensed with.
>
> (2) Upon receiving any application under subsection (1), the Land Administrator shall endorse, or cause to be endorsed, a note thereof on the register document of title to the land to which it relates.

(3) *In the case of an application made under section 141A, the land Administrator shall notify the other co-proprietors of the proposed partition, requiring them to submit in writing within a period of twenty-eight days from the date of service of the notice, any objection setting out fully the grounds on which the objection is based.*

(4) *Upon expiry of the period specified in subsection (3), the Land Administrator:*

(a) *where there are objections, shall notify the applicant and the remaining co-proprietors and hold an enquiry at the specified time and place*, and:

(i) if satisfied that good grounds exist, shall reject the application or, in the case of an application relating to land the partition of which requires the approval of the State Director, shall recommend that the application be rejected; or

(ii) in any other case, may approve the application or (as the case may be), recommend to the State Director that the application be approved; and

(b) where there are no objections, after due consideration, may approve the application or (as the case may be), recommend to the State Director that the application be approved.

(5) When the Land Administrator is satisfied that any application for partition of land is subject to:

(a) the category "agriculture" or to any condition requiring its use for an agricultural purpose; and

(b) the said land is two-fifths of a hectare or less than two-fifths of a hectare,

he shall refer the application to be approved by the State Authority.

(emphasis added)

[31] There is clear statutory requirement in s. 142(1)(b) of the NLC that the application for partition shall be made to the Land Administrator, in this case the third respondent, in the statutory Form 9B and shall be accompanied with, among others, a plan of the land on a scale sufficient to satisfy the Land Administrator of all the details of the partition. Further, s. 142(3) of the NLC provides that in the case of an application for partition made under s. 141A of the NLC, which is the case here, the Land Administrator, *ie*, the third respondent, shall notify the other co-proprietors of the proposed partition, requiring them to submit in writing within a period of 28 days from the date of service of the notice, any objection setting out fully the grounds on which the objection is based.

[32] Hence, there are two important provisions in s. 142(3) of the NLC, the first a legal duty and the other a statutory right, namely:

(i) that upon receiving the first respondent's application under s. 141A of the NLC, the third respondent shall give the appellant notice of the said application to the other co-proprietors; and

A (ii) that upon receipt of such notification, the other co-proprietors are afforded the statutory right to raise objection to the application for partition setting out fully the grounds on which the objection is based, and such right shall be exercised within a period of 28 days from the date of service of the notice.

B **[33]** Further, s.142(4)(a) of the NLC provides that in case there are objections by the other co-proprietors of the proposed partition, the third respondent shall give notice to all co-proprietors of an enquiry to be held at a specified time and place to enquire into the objections. This would be the co-proprietors' right to be heard, a substantive right in law.

C **[34]** It is common ground that the appellant was neither involved in nor notified of the application by the first respondent for the partition of the subject lands. The first respondent never brought his application under s. 141A of the NLC to the appellant's knowledge.

D **[35]** The third respondent sought to serve the s. 142(3) statutory notice of the first respondent's application to the appellant by way of substituted service under s. 432 of the NLC. However, the Court of Appeal found the said substituted service to be irregular, and thus there was no proper service of the notice required under s. 142(3) of the NLC. This failure meant that the appellant was deprived of his right to object to the first respondent's E application and further denied his right to be heard on the objection at the statutorily mandated enquiry to be conducted by the third respondent. This is a grave breach of the appellant's statutory right and a clear denial of natural justice.

F **[36]** The second and third respondents then proceeded with the first respondent's application in the absence of any participation by the appellant, and approved the application for partition based on the plan submitted by the first respondent. And that plan submitted by the first respondent was not in accordance with the terms of the agreement. Now, once the second respondent had approved the first respondent's partition application for both G the plots of land held under Geran 326882 and Geran 326883, there is a further statutory requirement for the third respondent to notify all co-proprietors of that approval. This requirement is provided in s. 143(4) of the NLC, which reads:

H 143 Powers of Land Administrator or State Director in relation to applications

...

(4) *On approving*, or being informed by the State Director that he has approved, the partition of any land, *the Land Administrator shall notify each* I *of the co-proprietors of the approval*, and of any modifications subject to which it is given, and shall in each such notification specify, *and call upon the co-proprietors as a whole to pay to him within a specified time*:

(a) *in a case where the individual portions are to be surveyed by a Survey Officer, the amount, or estimated amount, of the fees chargeable for the survey of each portion*; and

(b) *in every case, the fees chargeable in connection with the preparation and registration of final documents of title to each portion.*

(emphasis added)

[37] Hence, apart from notifying the co-proprietors of the approval, the third respondent must also require the co-proprietors, namely the appellant and first respondent, to pay the survey fees for their respective portions and the fees chargeable in connection with the preparation and registration of final documents of title to each portion. Such notice would have to be served on the appellant in accordance with the provisions in s. 431 of the NLC:

431 Methods of service

(1) Without prejudice to any other method of service, a notice may be served on a person or body for the purposes of this Act:

(a) by delivering the notice to the person; or

(b) by delivering the notice:

(i) at the person's usual or last known place of abode or business to his servant or to an adult member of his family; or

(ii) at the body's registered office or usual or last known place of business to its servant or agent; or

(c) by leaving the notice in a cover addressed to the person or body:

(i) at the person's usual or last known abode or place of business; or

(ii) at the body's registered office or usual or last known place of business; or

(d) by sending the notice by prepaid registered post to the person or body at an address for service given in pursuance of any provision of this Act or, where no such address has been given:

(i) at the person's usual or last known abode or place of business; or

(ii) at the body's registered office or usual or last known place of business; or

(e) by substituted service in accordance with section 432.

[38] Further, s. 430 of the NLC defines "notice" as follows:

430 Interpretation

In this Part, "notice" includes any notification, instrument or other document authorized or required by this Act to be served on any person or body.

Hence, it is very clear that in order for the notice to be served in the manner prescribed in s. 431 of the NLC, it must be in writing, for the act of serving the notice by delivering, leaving, posting, or substituted service in mode envisaged in s. 432 of the NLC can only be done through a document.

[39] An administrative decision is not operative until proper notice is given to the person affected. Public authorities must act reasonably and fairly, which includes communicating their decisions effectively so that the persons affected can exercise their legal rights. Where the statute required notice to be served, failure to communicate in accordance with the statutory procedure rendered the decision ineffective and unenforceable. Effective communication is essential to give the affected party notice and an opportunity to comply with, challenge, or act upon the decision. This was noted by the Federal Court in *Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor* [2015] 3 CLJ 861; [2016] 1 MLJ 544, at 893 (CLJ); p. 577 (MLJ), where it observed:

> [109] By the acquisitions of the land, the appellant was deprived of its right to own the property, As such it would only be just and fair that the decision to acquire the lands be brought to the appellant's actual knowledge by way of communicating the same to the appellant. The rights of a citizen to property under art. 13 of the Federal Constitution could only be deprived in accordance with law and that an actual or express notice (as opposed to a constructive notice by way of a *gazette*) of such deprivation ought to have been given to the citizen. *The appellant cannot be expected to apply for leave to commence judicial review to challenge the deprivation of its rights to the property unless it has knowledge or is made aware of such deprivation and this could only happen when the appellant is served with the actual or express notice that its right has been infringed.*
>
> (emphasis added)

[40] Hence, for time to run for an appeal to be lodged under s. 418 of the NLC, the appellant would need to be properly served with the decision in accordance with the relevant provisions of the statute, from which the appellant would have actual knowledge of the decision.

[41] Whether a formal mode of communication is required depends on the nature of the decision, the statutory framework governing the authority, and the legal consequences of the decision. In law, the communication of a decision by a lawful authority does not always have to be in a particular formal style, unless the same is statutorily prescribed. We note that there is no requirement of a specific form in the NLC. However, we would hasten to add that, though the form of notice is not stipulated, the decision to be communicated under s. 143(4) of the NLC must be in writing by virtue of the provisions of s. 431 of the NLC relating to service of notices, and such notice must contain the conditions or particulars stipulated in s. 143(4)(a) and (b) of the NLC. Further, it is obvious that where substituted service is resorted to under s. 432 of the NLC, the notice cannot be put in writing.

[42] Where the enabling statute or regulation prescribes the mode of communication, those requirements must be strictly followed. Hence, in this case, the decision of the second respondent must be officially conveyed in writing to those affected, including the appellant as co-proprietor, as is required under s. 143(4) of the NLC. After all, the second respondent's decision is the culmination of the statutory function carried out by the second and third respondents in exercise of their official duties. There is no reason why the notification of the decision should be anything other than official and in writing, when the application itself is under a statutory form prescribed by statute. Thus, the notice shall be officially under the hand of the third respondent and shall convey the decision fully and must contain sufficient particulars to enable those affected to avail themselves of their legal rights and remedies, including filing an appeal to the High Court under s. 418 of the NLC.

[43] The right to be informed of a decision of an authority carrying out a statutory function is not merely part of procedural fairness but one of substantial justice. A person cannot be expected to comply with or challenge a decision they are unaware of or one that does not convey the decision comprehensively as a whole. Thus, we would state that when an authority conveys any decision upon a formal application being made, such as an application for partition under s. 141A of the NLC, it is best done *via* formal written communication, such as a formal letter under the hand of the said authority, because:

(i) it affects legal rights or obligations and provides clear evidence of the date and content of the decision;

(ii) it protects the authority against claims of non-communication and in this regard establishes proof of communication; and

(iii) it enables accurate calculation of time limits for statutory appeals or judicial review.

[44] The facts of this case show that sometime in early March 2021, the land surveyor from the third respondent's office was on the land held under Geran 326882 to carry out survey of the said land for the purpose of partition. In the course of carrying out work, the surveyor had shown the appellant a letter dated 3 September 2020 for the partition of the land contained in Geran 326882. It must be noted that the surveyor was not on the land to serve the notice of the second respondent's decision, which must be done in accordance to s. 143(4) of the NLC, but merely to carry out land survey works. In any event, no service of the notice of decision was done by the surveyor in early March 2021, Nor did the third respondent serve notice of the second respondent's decision dated 7 August 2020 to the appellant, as required under s. 143(4) of the NLC, in accordance to the

A modes of service stipulated in s. 431 of the NLC, at any time after the decision was made, until the appellant's solicitors wrote the letter dated 13 August 2021.

[45] It bears emphasis that the appellant's encounter with the surveyor was the first time that the appellant had any inkling of the first respondent's B application for partition and that there was an approval by the second respondent in respect of Geran 326882. And importantly, it must be noted that there was no mention whatsoever made by the surveyor as regards to the approval for partition of the land held under Geran 326883. At best, the information given by the surveyor to the appellant was incomplete. Hence, C it cannot be said that the appellant had actual knowledge in March 2021 of the second respondent's decision approving the partition of both the plots of land contained in Geran 326882 and Geran 326883. Nor was the manner in which the partition of both plots was to be done conveyed to the appellant.

D **[46]** This lack of information prompted the appellant to retain solicitors and write to the second and third respondents *via* letter dated 26 March 2021 for further information and documents. There was no response from the second and third respondents. This led to a meeting in the third respondent's office between the appellant's solicitors and the Assistant District Officer on 12 August 2021, which was followed by the issuance of a letter dated E 13 August 2021 by the appellant's solicitors to the second and third respondents. In response to that letter of 13 August 2021, the second and third respondents replied *via* their letter dated 18 August 2021 enclosing the first respondent's application for partition of the lands held under Geran 326882 and Geran 326883 together with documents evidencing the decision F of the second respondent made on 7 August 2020 approving the application for partition. This is the first time that the appellant was served with notice of the first respondent's application under s. 141A of the NLC, as well as notice of the second respondent's decision approving the partition in respect of both plots of land, which would accord with the requirements of s. 143(4) G and s. 431 of the NLC.

[47] Hence, we are of the considered view that for the computation of time provided in s. 418 of the NLC, the date on which the decision was communicated to the appellant is 18 August 2021 and not March 2021. Thus, we are of the respectful view that both the High Court and Court of H Appeal had erred in holding that the three months' timeline to file the appeal under s. 418 of the NLC be calculated from the date the appellant was informed about the second respondent's decision by the surveyor in early March 2021 and not from the date the appellant received actual notice of the decision in full, and the related documents. It was only on 18 August 2021 I that the appellant knew with some certainty as to the exact nature of the

second respondent's partition approval, thus enabling him to effectively lodge an appeal under s. 418 of the NLC. He could not have done so with the limited information that he had from the surveyor in early March 2021.

[48] It must be noted that the decision of the second respondent to approve the application for partition was made as early as 7 August 2020 and yet the second and third defendants did not see it fit to perform their statutory duty to timeously serve that decision on the appellant, who as an affected party had the statutory right to be served with that notice of decision. And it is disheartening that the second and third respondents are now clinging onto straws to argue that their statutory duty to notify had been fulfilled by the surveyor who was on the land not to serve any notice, but to survey the land and give effect to the second respondent's decision, in fact, the evidence shows that the second and third respondents had no knowledge of the surveyor's presence on the land in March 2021.

[49] Taking 18 August 2021 as the date on which the decision was communicated, the appellant had until 18 November 2021 to file his appeal under s. 418 of the NLC. The originating summons in this case was filed on 3 November 2021, which is well within time. Hence, we find that the appeal is competent, and the courts below ought to have considered the appeal on its merits.

[50] The appellant and first respondent were co-proprietors of the lands contained in Geran 326882 and Geran 326883. They had a contract, in the form of the agreement, that governed their relationship as co-proprietors of undivided equal shares. Under the agreement, the land was apportioned into two parts, where the upper portion would be the appellant's and the lower portion that of the first respondent. The appellant's father and subsequently the appellant cultivated durian trees on the appellant's portion, whilst the first respondent cultivated oil palm trees on his portion. The appellant was entitled to rely on and enforce the terms of the agreement – see *Margaret Chua v. Ho Swee Kiew & Ors* [1961] CLJU 61; [1961] 1 LNS 61; [1961] 1 MLJ 173. Hence, the conduct of the first respondent in applying for and obtaining partition of the two plots of land in a manner that fundamentally breached the terms of the agreement, as can be seen in the sketch plan earlier, where the partition runs from top to down, instead of left to right, is a clear violation of the appellant's contractual rights under the agreement.

[51] In considering this appeal, s. 418(2) of the NLC enjoins the court to "make such order thereon as it considers just". We find that the first respondent in making the application for partition under s. 141A of the NLC has a duty to make full and frank disclosure of all relevant matters for the consideration of the approving authority, which is the second respondent in this case. In that regard, the agreement is a crucial document that must be disclosed in the application for partition, which the first respondent failed to

A do. The suppression of this crucial piece of evidence means that the second respondent, in coming to the decision to partition the two plots in the manner sought by the first respondent, did not have all the relevant information before him. This has caused injustice and harm to the appellant. In fact, when the partition is done in that manner, about half the appellant's durian trees
B goes to the first respondent, and half the first respondent's oil palm trees goes to the appellant.

[52] Further, we find that for reasons discussed earlier, the non-service of the first respondent's application for partition on the appellant as required and mandated under s. 142(3) of the NLC is a fatal flaw. This failure vitiates
C the proceedings for partition conducted by the second respondent and renders his decision invalid, as the appellant has been deprived of his statutory right to raise objection to the partition of the land as submitted in the first respondent's application and to be heard on it.

Answer To The Leave Question

D

[53] Thus, we answer the leave question as follows:

Section 143(4) of the NLC provides that the decision of the State Director or Land Administrator, as the case may be, shall be notified by the Land Administrator to each of the co-proprietors. The notification shall be served
E on the co-proprietors in accordance with s. 431 of the NLC, which necessarily means that it must be writing and it must be official documentary communication under the hand of the authority such that it conforms with the requirements of the NLC. Hence, the phrase "communicated to him" in s. 418 of the NLC must be *via* official correspondence from the Land
F Administrator.

Conclusion

[54] For the reasons stated above, we allow the appeal with costs here and below in the sum of RM30,000 against the first respondent and RM20,000 against the second and third respondents, respectively. The decisions of both
G the High Court and Court of Appeal are set-aside and the following further orders as made:

(i) the decision of the second respondent dated 7 August 2020 approving the first respondent's application for partition of the land held under
H Hakmilik Geran 326882 Lot 15951 Mukim Kapar, Daerah Klang, Negeri Selangor into two separate lots namely PT 84526, Mukim Kapar, Daerah Klang, Negeri Selangor held under HSD 165150 and PT 84527, Mukim Kapar, Daerah Klang, Negeri Selangor held under HSD 165151 is cancelled;

I

(ii) the decision of the second respondent dated 7 August 2020 approving the first respondent's application for partition of the land held under Hakmilik Geran 326883 Lot 15952 Mukim Kapar, Daerah Klang, Negeri Selangor into two separate lots namely PT 84528, Mukim Kapar, Daerah Klang, Negeri Selangor held under HSD 165152 and PT 84529, Mukim Kapar, Daerah Klang, Negeri Selangor held under HSD 165153 is cancelled; and

(iii) the four fresh documents of title issued by the second and/or third respondents following the decision of the second respondent dated 7 August 2020 to partition namely (i) PT 84526, Mukim Kapar, Daerah Klang, Negeri Selangor held under HSD 165150; (ii) PT 84527, Mukim Kapar, Daerah Klang, Negeri Selangor held under HSD 165151; (iii) PT 84528, Mukim Kapar, Daerah Klang, Negeri Selangor held under HSD 165152; and (iv) PT 84529, Mukim Kapar, Daerah Klang, Negeri Selangor held under HSD 165153 are cancelled and the original two titles namely (i) Hakmilik Geran 326882 Lot 15951 Mukim Kapar, Daerah Klang, Negeri Selangor; and (ii) Hakmilik Geran 326883 Lot 15952 Mukim Kapar, Daerah Klang, Negeri Selangor be reinstated and reissued.